THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17279 OF 2005

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ORAL ORDER:

The petitioners claim to be toddy tappers' by profession. It is stated that they are the residents of Kodumuru village and Mandal, Kurnool district. In this Writ Petition they are challenging the proceedings of the 1st respondent-Commissioner of Prohibition & Excise dated 21.06.2005, wherein additional counters have been sanctioned for the existing TFTs in the Kurnool district including Kodumuru village for the year 2004-2005.

The petitioners state that as per the excise policy and the guidelines issued under G.O.Ms.No.767 dated 29.09.2004 applications for grant of new TCS/TFTs were required to be filed on or before 31.12.2004, and the last date for issuance of licenses was fixed as 28.02.2005, which was subsequently extended up to 15.3.2005. It is stated that the petitioners have applied for grant of fresh additional TFT licences for the excise year 2003-2004 and they were called for tappers' test by the 4th respondent by notice dated 31.12.2003. Similarly, respondents 5 to 7 were also called for tappers' test. In the test conducted, all the petitioners were held to be qualified, however, respondents 5 to 7 were disqualified. In spite of the same, applications made by the petitioners were kept pending and even after the expiry of the last date i.e., 15.03.2005, the respondents 1 to 4 did not consider the request of the petitioners for grant of licences in respect of additional TFT counters at Kodumuru village. On the other hand, the impugned proceedings dated 21.06.2005 were issued granting additional counters in favour of respondents 5 to 7 for the existing TFTs in Kodumuru village, Kurnool district for the excise year 2004-2005. Aggrieved by the said action this Writ Petition is filed contending that the impugned proceedings are contrary to the guidelines under G.O.Ms.No.767.

On behalf of the respondents 1 to 4, Prohibition & Excise Inspector, Kodumur filed a counter-affidavit stating that the excise policy for the year 2004-2005 was announced in terms of G.O.Ms.No.767 dated 29.09.2004 and the schedule for grant of TCS and TFT has been fixed as per the instructions of the Commissioner of Prohibition & Excise dated 7.10.2004. As per the time schedule, the last date for

issuance of licenses by the Excise Superintendent was 28.02.2005. It is further stated that the excise year for toddy shops commences from 1st October and ends by 30th September of every year. Though the fact that the last date for issuance of licenses was extended up to 15.3.2005 and that all the four petitioners, who submitted their applications for grant of TFT licences for the excise year 2003-2004, were qualified in the tapping test has not been denied, but the allegation that respondents 5 to 7 were disqualified has been denied. The fact that there was a proposal for sanction of additional counters in favour of petitioners has also been admitted, but it is stated that the Collector and the Commissioner of Prohibition & Excise, who is the competent authority, opined that since there are already many existing shops in the district, sanction of additional shops is not viable. It is further stated that respondents 5 to 7 submitted their applications for grant of TFT licences for the village Kodumuru for the excise year 2004-2005, and having conducted tapping test, they were qualified and their names were recommended for sanction of additional counters at Kodumur village. Accordingly, the Commissioner of Prohibition & Excise under the impugned proceedings granted additional counters in favour of respondents 5 to 7. The said orders were issued as per the guidelines issued in the excise policy. The allegation of the petitioners that the licences were granted on the basis of political considerations has been denied and it is stated that they were granted purely on merit following the guidelines. The further allegation that respondents 5 to 7 are not tappers and that they are not residents of Kodumuru has been also denied and it is stated that interference by this Court is not warranted.

The respondents 5 to 7 filed a separate counter-affidavit on the same lines. It is also contended that the petitioners cannot maintain this Writ Petition without exhausting the alternative remedy of appeal.

I have heard the learned counsel for both the parties and perused the material on record.

In the counter-affidavit filed by the official respondents it is admitted that the Commissioner of Prohibition & Excise, Hyderabad, issued instructions as under:

> "In respect of the applications of last year which could not be considered during 2003-2004 the Prohibition & Excise Superintendents are requested to process the same in the light of the Policy for 2004-2005 and take necessary action for grant of TCS/TFTs. There is no need for fresh applications"

It is not in dispute that the petitioners were qualified in the tapping test during the year 2003-2004 itself. As a matter of fact their cases were proposed for sanction of additional counters, but the same was not granted only on the ground that additional shops are not viable. If that be so, it cannot be taken that their request was rejected, and consequently, in the light of the instructions of the Commissioner of Prohibition & Excise, which states that the applications of the last year which could not be considered during 2003-2004 should be processed for the next year i.e., 2004-2005, the request of the petitioners ought not to have been ignored.

A perusal of the impugned order dated 21.06.2005 shows that the respondents 5 to 7 were granted licences merely on the basis of letters of a Member of Legislative Assembly and a Member of Parliament dated 6.02.2005. The 1st respondent did not record any reasons for preferring the respondents 5 to 7, but merely directed the Prohibition and Excise Superintendent to sanction additional counters in their favour.

The impugned order granting licences in favour of respondents 5 to 7 is apparently not in accordance with the excise policy and the instructions issued by the Commissioner of Prohibition & Excise.

Accordingly, the impugned order dated 2.06.2005 is set aside and the respondents 1 to 3 are directed to consider the request of the petitioners as well as the request of the respondents 5 to 7 in the light of the excise policy for the year 2004-2005 and pass appropriate orders afresh in accordance with law. Such exercise shall be completed as expeditiously as possible, preferably within a period of four weeks from the date of receipt of this order.

The Writ Petition is accordingly disposed of. No costs.

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(G. RONIHI, J.)

3rd March, 2006.

Kgr.

Issue CC in three days.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17279 OF 2005

3rd March, 2006.

Between:

K. E. Krishna Murthy and three others. .. Petitioners.

And

The Commissioner of Prohibition &

AExcise, Government of A.P., Hyderabad and

six others. .. Respondents.